IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

OP.No. 16588 of 1999(Y)

PETITIONER:

THE DIRECTOR, MUTT INDIA MUTUAL AID TRUST,
EZHUPUNNA SOUTH P.O., CHERTHALA.

BY ADV. SRI.M.V.MATHEW

RESPONDENTS:

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1) **SECRETARY TO THE GOVERNMENT,**
TAXES (H) DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2) **TAHSILDAR, CHERTHALA,**
ALAPPUAZHA DISTRICT.

BY GOVT. PLEADER SRI.TEK CHAND V.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 07/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.27033 OF 1999 IN OP.NO.16588 OF 1999-Y.

DISMISSED.

7/9/2007. **Sd/- T.R.Ramachandran Nair, Judge.**

PETITIONER'S EXHIBITS:-

Ext.P1: **Copy of the bye-law of Mutt India Mutual Aid Trust.**

Ext.P2: **Copy of the enquiry report dtd.29.4.1993 prepared by the 2nd respondent.**

Ext.P3: **Copy of the order dtd.14.6.1995 passed by the 2nd respondent.**

Ext.P4: **Copy of the order received by the petitioner dtd.20.4.1999.**

Ext.P5: **Copy of the communication dtd.24.7.1986 sent by Director.**

Ext.P6: **Copy of the relevant pages prepared by Panchayat.**

Ext.P7: **Copy of the certificate issued by Village Officer, Cherthala, dtd.11.5.1993 to the petitioner.**

Ext.P8: **Copy of certificate dtd.14.2.1994 issued by Addl.District Magistrate to the petitioner.'**

Ext.P9: **Copy of the Income Tax return for the assessment years 1992-93, 1993-94, 1994-95 filed and accepted by Income Tax Department.**

RESPONDENTS' EXHIBITS:- **NIL.**

(TRUE COPY)

P.A. TO JUDGE.

Kvs/-

T.R.RAMACHANDRAN NAIR, J.

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O.P.No. 16588 of 1999-Y.

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Dated this the 7th day of September, 2007.

J U D G M E N T

The petitioner institution is one registered under the Travancore Cochin Literary Scientific and Charitable Societies Registration Act, 1955. It is claimed that it is purely a charitable institution engaged in charitable activities such as free medical camps. The issue relates to the application submitted by the petitioner praying for exemption under Section 3(2) of the Kerala Building Tax Act.

2. The application was rejected by the Government as per Ext.P4. It is rejected on the grounds that the hospital is charging fees from the patients for treatment, it is running on a commercial basis and therefore it cannot be considered as a building principally used for charitable purpose.

3. The learned counsel for the petitioner points out that the hospital is not being run commercially and because the hospital is charging some fees from patients who are able to pay for treatment, it cannot be said that the building is not principally used for charitable purpose. It is also pointed out that if the petitioner is granted an opportunity to produce further materials it will be able to satisfy that the exemption sought for is really genuine which comes within the four corners of the Statute.

4. The issue has been settled by various decisions of this Court especially in *Medical Trust Hospital v. State of Kerala* (2004(2) ILR (Kerala) 408). Various tests have been laid down therein to judge whether a particular institution is eligible for grant of exemption.

5. Going by the order Ext.P4 it is clear that no detailed reasons are pointed out therein for arriving at the conclusion that the petitioner hospital is run on a commercial basis. Practically there is no detailed consideration of the case of the petitioner on its merit. Therefore Ext.P4 is quashed. The first respondent shall rehear the petitioner and pass fresh orders within a period of four months from the date of receipt of a copy of this judgment. The petitioner will be allowed to produce all materials in support of the claim for exemption. Till final orders are passed and communicated to the petitioner, the interim order staying the recovery proceedings will continue.

The Original Petition is allowed as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-